

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

Stuart Bragg,

NO. C 08-03192 JW

Plaintiff,

v.

**ORDER ADOPTING  
RECOMMENDATION OF MAGISTRATE  
JUDGE; DISMISSING COMPLAINT  
WITHOUT LEAVE TO AMEND**

The San Jose Mercury News, et al.,

Defendants.

Presently before the Court is Magistrate Judge Lloyd's Recommendation that the Complaint be Dismissed. (hereafter, "Recommendation," Docket Item No. 4.) In his Recommendation, Judge Lloyd granted Plaintiff's application to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(a)(1). Judge Lloyd, however, also recommended that Plaintiff's Complaint be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(i), which permits dismissal of an action that is "frivolous or malicious." Judge Lloyd found that the "rambling allegations of the Complaint are incoherent and delusional and do not present facts or legally coherent theories of liability establishing a claim for relief." (Recommendation at 2.)

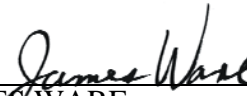
A claim may be dismissed as "factually frivolous only if the facts alleged are clearly baseless, a category encompassing allegations that are fanciful, fantastic, and delusional." Denton v. Hernandez, 504 U.S. 25, 32-33 (1992). The Court's independent review of Plaintiff's forty-page long Complaint reveals not a single clearly alleged fact, nor a single articulated theory of liability.

In addition, pursuant to Federal Rule of Civil Procedure 72(b), any objection to a Magistrate Judge's recommendation must be made within 10 days after being served with a copy of the

1 recommended disposition. See also Civ. L.R. 72-3; 28 U.S.C. § 636(b)(1)(B). On October 1, 2008,  
2 Plaintiff was served with a copy of the Recommendation. (See Docket Item No. 9.) No objection  
3 has been filed to date.

4 Accordingly, the Court ADOPTS Judge Lloyd's Recommendation and finds the Complaint  
5 frivolous within the meaning of 28 U.S.C. § 1915(e)(2)(B)(ii). The Court finds that leave to amend  
6 would be futile since it appears from the face of the Complaint that Plaintiff cannot cure its legal  
7 defects with additional factual allegations. Thus, the Court DISMISSES Plaintiff's Complaint,  
8 without leave to amend.

9  
10 Dated: October 30, 2008

  
\_\_\_\_\_  
JAMES WARE  
United States District Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2  
3 Stuart Bragg  
4 1051 Cayuga Street  
5 Santa Cruz, CA 95060

6 **Dated: October 30, 2008**

**Richard W. Wieking, Clerk**

7  
8 **By: /s/ JW Chambers**  
9 **Elizabeth Garcia**  
10 **Courtroom Deputy**